

April 1, 2011

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street  
Washington, D.C. 20554

CC Docket 02-6

Dear Ms. Dortch:

In accordance with Federal Communications Commission rules, Navajo Education Technology Consortium (NETC) is filing this Request For Review and/or Waiver appealing two USAC Notification Adjustment Letters ("COMADs") than rescinded previously approved funding commitments for Funding Year ("FY") 2004. Since the reasons for the COMADs are the same, both appeals are being presented in one document.

**Appeal #1:**

Name of applicant:	Navajo Education Technology Consortium (NETC)
Form 471 Application Number:	428029
FRN:	1199080
Funding year:	2004
Billed Entity Number:	26513
FCC Registration Number:	0014734016

Service Provider:	Navajo Communications/Frontier
SPIN#:	143002480

Date of Administrator's Letter Denying Appeal: February 4, 2011

Fund Recovery Amount: \$186,766.49

**Appeal #2:**

Billed-Entity Name of applicant:	Navajo Education Technology Consortium (NETC)
Form 471 Application Number:	432378
FRN:	1202243
Funding year:	2004
Billed Entity Number:	26513
FCC Registration Number:	0014734016

Service Provider:	Navajo Nation Department of Information Technology
SPIN#:	143027949

Date of Administrator's Letter Denying Appeal: February 22, 2011

Fund Recovery Amount: \$522,025.20

Contact Information:

Lennard Eltsosie  
Executive Director  
Navajo Education Technology Consortium  
(928) 221-9850  
email: [netc1@mail.ganado.k12.az.us](mailto:netc1@mail.ganado.k12.az.us)

STATEMENT IN SUPPORT OF APPEAL

I. FACTS

1. The original reason given for both COMADs: The technology plan for this entity, covering the relevant funding year, was not approved at the time of submission of the Form 486. The technology plan for the relevant funding year needed to be approved prior to submitting the Form 486 or the start of services, whichever was earlier. The SLD's denial of our appeals upheld the original denial reasons.
2. For FY 2002, FY 2003, and FY2004 the Navajo Education Technology Consortium (NETC) used (adopted) the Gallup-McKinley County Public Schools' (GMCS) State of New Mexico approved technology plan. Not only was Gallup the Fiscal Agent for NETC, the school district also comprised over 40% of NETC's member schools and the NETC members schools served the same population (students) as GMCS. GMCS' contributions had been significant in leadership, in technical expertise, and in digital delivery of video, so during the first years of the consortium's existence, they relied heavily on GMCS' experience with Technology Plans and aligned NETC's technology requirements with those plans.
3. During FY 2002, 2003 and 2004 the SLD performed Selective Reviews of the NETC applications. The selective reviewers involved were as follow:

FY 2002	Dick Destaffaney
FY 2003	Joe Moryl John Cavan
FY 2004	Tom Celentano Earl Baderschneider

4. In each of the 3 years NETC sent the selective reviewers copies of the GMCS technology plan along with an explanation that the plan was created by GMCS. In all 3 years, the SLD reviewers accepted those technology plan and funding was awarded for the NETC applications.
5. In each of the 3 years the submitted technology (GMCS) plans had been approved by the state of New Mexico prior to the submission of the 486. Specifically Attachment #090 shows that the 3 year plan covering FY 2004 was approved on August 29, 2003 long before the FY 2004 486 submission.

6. As one example, in August of 2004 NETC told the first FY 2004 Selective Reviewer, Mr. Celantano, the following regarding the FY 2004 application:

" The Navajo Education Technology Consortium is aligned with the GMCS NM state approved technology plan. This plan is attached in Index Tab 1."

7. In March of 2005, a second Selective Reviewer, Mr. Baderschneider asked the following question. We have underlined a section to highlight an important issue.

THE SLD'S QUESTION:

*"Technology Plan: During the FY 2004 Selective Review you provided a copy of the Gallup-McKinley County Schools and stated that "[t]he Navajo Education Technology Consortium is aligned with the GMCS NM state approved technology plan." That technology plan does not refer to the other [i.e. non GMCS] members of the Consortium that are a part of your FY 2002 Refile application. Please provide me with either a Technology Plan for the entire Consortium that covers FY 2003 and FY 2004, or provide other Technology Plans for FY 2003 and FY 2004 that cover the rest of the schools in the Consortium."*

NETC'S RESPONSE TO THE SLD'S QUESTION:

In March of 2005, NETC responded to Mr. Baderschneider with the following regarding the FY 2004 application.

"The Navajo Education Technology Consortium was using the GMCS NM state approved technology plan for FY 2002 (Year 5 Refile). Not only was Gallup GMCS our Fiscal Agent, they also comprised over 40% of our member schools. GMCS' contributions have been significant in leadership, in technical expertise, and in digital delivery of video, so during the first years, Year 5, 6, and 7 of applying for E-rate funding we aligned ourselves with GMCS for their experience with Technology Planning.

"While it was appropriate to align ourselves with the GMCS plan during our startup period, we have since understood the merits of developing our own, NETC Consortium Technology Plan. This plan is in the process of being approved by the State of New Mexico and is attached."

The March 2005 response must have satisfied Mr. Baderschneider because the SLD funded the application.

In early 2009 during a USAC audit, the Moss Adams auditors came to the opposite conclusion, they rejected the GMCS technology plan and kept insisting on a technology plan the specifically enumerated the other [i.e. non-GMCS] members of the Consortium that are a part of the application.

It should be noted that the grounds for the auditor's negative finding in 2009 is nearly identical to the issue raised by Mr. Baderschneider's in 2005 (underlined in item 5a above) which was answered to USAC's satisfaction by NETC back at that time.

8. On September 28, 2005 NETC's own technology plan for funding years 2004, 2005 and 2006 was finally approved. Subsequent applications to the SLD no longer relied on the GMCS technology plan. The September, 28, 2005 tech plan approval came before any priority 2 services were received for FY 2004. (This was because there had been delays in the project which had caused NETC to file delivery service extensions.)

## II. Discussion

A review of the facts makes it very clear that the auditors' negative conclusion was a direct contradiction of the conclusion reached by 5 different SLD reviewers over a 3 year period.

The auditors stated that they reached this opposite opinion because Gallup McKinley refused to provide documentation to support NETC's technology plans. The auditors also stated that GMCS denied knowing their tech plan was being used by the NETC, which fact they were unable to document for NETC. Other than the auditors' allegations, the auditors never provided NETC with direct evidence that Gallup actually made such statements about the tech plan. The auditors' conclusion is based solely on the fact that at the time of the audit Gallup-McKinley refused to provide corroborating documentation. In the attachment D.1 letter dated April 16, 2009, GMCS states that despite providing LOAs to the NETC consortium, they did not receive E-rate services through the consortium for the years subject of the audit. Their refusal to provide documentation was based on this lack of participation, which clearly allows for the inference that the corroborating documentation exists and is in the possession of GMCS.

The specific documents they are refusing to provide was related to Free and Reduced information which is not a refusal to provide technology plans and technology plan approval letters. (Indeed, the GMCS tech plans and proof of approvals have been provided to the auditor's several times.) Further, the letter confirms that GMCS had knowledge of NETC workings because the letter acknowledges that GMCS signed letters of agency (LOAs) giving NETC authority to file E-Rate applications.

In fact the auditors were provided with copious versions of NETC board minutes in which high level GMCS personnel were present and active participants in the board discussions. As a long time E-Rate applicant, it is certain that GMCS was aware of the SLD rules regarding technology planning. It is unthinkable that GMCS would have signed the NETC LOAs if there was any doubt that NETC had a valid technology plan.

Finally, although the GMCS letter states that GMCS "never participated in any E-rate application initiated by the Navajo Education Technology Consortium", it later clarifies that statement by stating that there were LOAs, but that "there were never any services requested or provided". This is totally consistent with NETC contention that GMCS was originally part of the Consortium application, but that they later withdrew from the consortium without ever having received services. Several PIA responses to that affect had been provided to the auditor's and one such letter is in Attachment D.2.

## III. Request for Waiver

NETC requests that if, despite the facts and arguments offered herein, the FCC agrees with the SLD and does not reverse the COMADs, that NETC be granted a waiver of the applicable rules regarding technology plans. This would serve the best interests of the students of the Navajo Nation who are the ones for whom the E-rate program funds are intended. Additionally, the financial hardship that will result from USAC's determinations supports waiver.

#### IV. Conclusion

Based on the above it is clear that the auditors and the SLD erred by recommending commitment adjustment recovery for both FRNs. NETC should not be penalized just because GMCS refuses to provide corroborating documentation. In its letter it is clear that GMCS has its own reasons for not providing the documents, but their reasons make no mention of the technology plan. GMCS does not deny that the GMCS approved technology plan was used by NETC while GMCS was still part of the E-rate consortium. NETC should not be penalized for a third-party's refusal to provide documentation. This is especially true when USAC PIA reviewers had been in possession of the technology plans for 3 years, and reviewed it several times dating from the initial funding year to the funding year at issue FY 2004.

NETC complied with SLD rules to the best of its ability and timely provided all requested documentation during the course of the multiple Selective Reviews. It should not now be required to return funds based on an insufficient auditors' finding that was caused by a third party failing to provide the auditors information already in the possession of USAC. The hardship this unjust COMAD would cause to the impoverished students of the Navajo Nation would be immeasurable.

Respectfully submitted,

Lennard Eltsosie

**Notification of Improperly Disbursed Funds Recovery Letter**  
**Funding Year 2004: July 1, 2004 - June 30, 2005**

September 10, 2010

Lennard Eltsosie  
NAVAJO EDUCATION TECHNOLOGY CONSORTIUM  
Po Box 1757  
Ganado, AZ 86505

Re: Form 471 Application Number: 432378  
Funding Year: 2004  
Applicant's Form Identifier: NETCYR7#2  
Billed Entity Number: 226513  
FCC Registration Number: 0014734016  
SPIN: 143027949  
SPIN Name: The Navajo Nation - Department of Information Technol  
Service Provider Contact Person: Harold Skow

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were disbursed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now recover these improper disbursements. The purpose of this letter is to inform you of the recoveries as required by Program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the Program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error.

This is NOT a bill. The next step in the recovery of improperly disbursed funds process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).

#### TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Notification of Improperly Disbursed Funds decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Improperly Disbursed Funds Recovery Letter and the funding request numbers you are appealing. Your letter of appeal must include the
  - Billed Entity Name,
  - Form 471 Application Number,
  - Billed Entity Number, and
  - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Funding Disbursement Recovery Report included with this letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org). USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 S. Jefferson Rd.  
P. O. Box 902  
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

#### FUNDING DISBURSEMENT RECOVERY REPORT

On the pages following this letter, we have provided a Funding Disbursement Recovery Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from the application for which recovery is necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to the service provider for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action. The Report explains the exact amount the applicant is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc:Harold Skow  
The Navajo Nation - Department of Information Technology

Funding Disbursement Recovery Report  
for Form 471 Application Number: 432378

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Funding Request Number:	1202243
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143027949
Service Provider Name:	The Navajo Nation - Department of Information Technol
Contract Number:	C
Billing Account Number:	
Site Identifier:	226513
Funding Commitment:	\$608,400.00
Funds Disbursed to Date:	\$522,025.20
Funds to be Recovered from Applicant:	\$522,025.20

Disbursed Funds Recovery Explanation:

After a thorough investigation, it has been determined that funds were improperly disbursed on this funding request. During the course of review, it was determined that the technology plan for this entity, covering the relevant funding year, was not approved at the time of submission of the Form 486. Program rules require applicants to obtain approval of technology plans by parties qualified to approve technology plans, prior to submitting the Form 486, for services other than basic telecommunications service. Since this is not a request for basic telecommunications service, the technology plan for the relevant funding year needed to be approved prior to submitting the Form 486 or the start of services, whichever was earlier. Since this requirement was not met USAC will seek recovery of any improperly disbursed funds from the applicant.



**Notification of Improperly Disbursed Funds Recovery Letter**  
**Funding Year 2004: July 1, 2004 - June 30, 2005**

September 10, 2010

Lennard Eltsosie  
NAVAJO EDUCATION TECHNOLOGY CONSORTIUM  
Po Box 1757  
Ganado, AZ 86505

Re: Form 471 Application Number: 428029  
Funding Year: 2004  
Applicant's Form Identifier: NETCYR7#1  
Billed Entity Number: 226513  
FCC Registration Number: 0014734016  
SPIN: 143002480  
SPIN Name: NAVAJO COMM CO  
Service Provider Contact Person: Jessica Matushek

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100 S. Jefferson Rd.  
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Whippany, NJ 07981

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Schools and Libraries Division  
Universal Services Administrative Company

cc: Jessica Matushek  
NAVAJO COMM CO

Funding Disbursement Recovery Report  
for Form 471 Application Number: 428029

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Funding Request Number: 1199080  
Services Ordered: TELCOMM SERVICES  
SPIN: 143002480  
Service Provider Name: NAVAJO COMM CO  
Contract Number: T  
Billing Account Number:  
Site Identifier: 226513  
Funding Commitment: \$1,055,001.69  
Funds Disbursed to Date: \$186,766.48  
Funds to be Recovered from Applicant: \$186,766.48

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